

In the wake of the decision in the Barrow Council legionnaires' disease case **Michael Appleby** discusses the details and what the outcome means for organisations and their management

# Mind yourselves, middle managers

## CORPORATE MANSLAUGHTER

Gillian Beckingham, the council architect at the centre of Britain's biggest outbreak of legionnaires' disease, was acquitted of manslaughter at Preston Crown Court on 31 July 2006. However, she was convicted, by a majority of 11 to 1, of a breach of section 7 of the Health and Safety at Work, etc Act 1974 and fined £15,000.

This was the second time Ms Beckingham had faced a manslaughter trial over the outbreak. At the original trial, in 2005, Barrow Borough Council was charged with manslaughter and Ms Beckingham identified as the 'controlling mind' of the Council. It was the first case where a council had been prosecuted for corporate manslaughter.

A 'controlling mind' has to be convicted of manslaughter for a company (or council) to be convicted. In *Tesco Supermarkets Ltd v Nattrass* [1972] AC 153, which concerned a prosecution under the Trades Descriptions Act 1968, the House of Lords defined individuals who are controlling minds as "...the Board of Directors, the Managing Director, and perhaps other superior officers of the company... [who]... carry out the functions of management and speak and act as the company".

The judge in the original trial ruled that Ms Beckingham was not a controlling mind, so the case against the Council collapsed. This should be contrasted with the decision of the trial judge in the prosecution of Balfour Beatty for manslaughter in relation to the Hatfield train derailment, where he ruled that the company's civil engineer could be a controlling mind for certain functions.

The case continued against Ms Beckingham for manslaughter but the jury was unable to reach a verdict, so a retrial was ordered.

The judge, when sentencing Barrow Borough Council, said its failings were grave "in the extreme" and that:



Illustration by Arthur Phillips

"The failings were not only at the lowest levels, or at the levels of Ms Beckingham. These failings were all the way to the top of the Council."

And yet Ms Beckingham was the only one from the Council prosecuted for any criminal offence.

The judge also said if the Council had been a commercial organisation, with a multi-million turnover, he would have imposed a fine in excess of a million pounds.

The judge told Ms Beckingham that, in his opinion, her failings "were repeated and serious". The fine is thought to be the largest for a breach of section 7 HSWA and represents 50 per cent of her annual gross salary. The judge stated the fine would have been more but for her "limited means".

On 21 July 2006 the government's long-awaited Corporate Manslaughter Bill received its first reading. Under this new law a company will be guilty of manslaughter if the way in which its activities are managed or organised by its 'senior managers' causes death

and amounts to a gross breach of duty. It removes the need to convict a 'controlling mind'.

Although the Bill excludes individual liability for 'aiding and abetting' the offence it does not prohibit the prosecution of an individual for manslaughter in his/her own right, or a breach of HSWA.

Given the need to prove the company's failure to be at 'senior manager' level, any investigation of a large organisation is bound to consider the conduct of its middle managers and upwards. There is no reason why a prosecution of a company for manslaughter would not be accompanied by prosecutions of individuals (as in the Hatfield prosecution, for example).

Ms Beckingham's case suggests that even if a manager is only convicted of a HSWA charge, which does not have a custodial penalty, then they can expect to be fined a substantial amount of money that will be linked to the size of their pay packet. ■